67 45

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LOU ANN MILLETTE, a minor, by PATRICK MILLETTE, her father and next friend,	)	
Plaintiff-Respondent,	)	
v.	)	Appeal from the Circuit Court of
DONALD ADCOCK,	)	DuPage County, Illinois - 18th
Defendant-Petitioner.	)	Judicial Circuit

MR. PRESIDING JUSTICE ABRAHAMSON DELIVERED THE OPINION OF THE COURT:

This is an appeal from the Circuit Court of DuPage County. The action was for personal injuries. A jury rendered a verdict in favor of the defendant. The trial court on post trial motion set aside the verdict and judgment and granted a new trial. Defendant, on appeal, asserts that the trial court abused its discretion in finding that the verdict was contrary to the manifest weight of the evidence.

On Monday, October 15, 1963, plaintiff, Lou Ann Millette, was 5 1/2 years of age. The day was sunny, clear, dry and warm. The accident occurred in a residential neighborhood on a school day, but after classes had been dismissed for the day.

Donald Adcock, defendant, was 18 years old at the time. He was driving a 1955 Pontiac in a southerly direction on Westmore Avenue between North Avenue and Ridge Road in the Village of Villa Park. In the right front seat of his car was a teenage friend

defendant's, Donald Morris, The Pontiac brakes were in good condition and the tires had been used approximately 3,000 miles. A shopping center was located on the southwest corner of North and WestmoreAvenues. There is an exit from the shopping center parking lot to Westmore Avenue. Vehicles leaving through this exit are required to stop at a stop sign. Adjacent to the shopping center there is an alley which intersects Westmore Avenue. At the time of the occurrence there was no stop sign for vehicles entering Westmore from the alley. The posted speed limit on Westmore Avenue was 25 M. P. H. The only vehicle on Westmore between North Avenue and Ridge Road was a Cadillac which was parked against the west curb near the intersection with Ridge Road. Plaintiff, when she was struck by defendant's car, was within a crosswalk, attempting to cross Westmore Avenue from West to East at the corner of Westmore and Ridge. Other children were playing in front yards of homes along Westmore Avenue.

Defendant, Donald Adcock, testified that he was familiar with the area and was aware that there were many children in the neighborhood, who, on nice days, played outside. Defendant's version of the occurrence was that he entered Westmore Avenue from the exit in the parking lot after having stopped at the stop sign. He testified he accelerated to about 20 M. P. H. and as he approached the parked Cadillac he swerved to his left to go around the Cadillac. As he approached the intersection he observed a head in front of the Cadillac. As soon as he saw it, his passenger, Morris, yelled, "Look out!". He slammed on the brakes and swerved sharply to the left to try to avoid hitting the child. There were two sets of skid marks observable on Westmore Avenue. The initial set extended approximately 60 feet to a point near the crosswalk and, after a break of about 6 to 8

feet, a second set continued for about 30 to 32 feet. Defendant admitted the second set of skid marks, south of the crosswalk, were made by his car but denied his car had made the initial set of skid marks. The investigating police officer, James J. Jorgensen, testified both sets were made by defendant's vehicle. He also testified that based on the physical evidence, the defendant was exceeding the speed limit at the time of the accident. Another eyewitness testified that she was walking south from the shopping center on the west side of Westmore Avenue. She saw defendant turn onto Westmore from the alley without stopping and testified that he was going at a high rate of speed. She estimated he was going 15 to 20 M. P. H. faster than she had observed other cars going along the street. She stated she saw him swerve sharply to the left side of the street and that she heard the squeal of brakes and saw the plaintiff being thrown into the air.

The plaintiff contends that the trial court properly exercised its discretion in finding that the verdict was contrary to the manifest weight of the evidence and further contends that a new trial should have been granted because of an improper instruction from which the jury might have considered contributory negligence on the part of an infant and because of certain conduct of defendant's attorney in not making copies of statements of witnesses available to plaintiff within ample time, as well as certain statements of counsel made during the closing argument.

Defendant contends that the trial court abused its discretion in granting a new trial and asserts that when there is conflicting evidence as there is in this case, the trial judge cannot

substitute his judgment for that of the jury. The conflicting evidence seems to be the point at which defendant's vehicle entered Westmore Avenue, defendant's speed, the length and location of the skid marks and the conduct of the plaintiff leading up to the occurrence. It is, however, the duty of the trial judge to weigh the evidence and to determine whether substantial justice has been done. Heideman v. Kelsey, 414 Ill. 453, 456; Morella v. Melrose Park Cab Co., 65 Ill. App. 2d 175, 181. The mere fact that there is a conflict in the evidence is not sufficient to determine that the granting of a new trial was an abuse of discretion. Of necessity, the trial judge must weigh the conflicts in the evidence. Carter v. Geeseman, 303 Ill. App. 280, 285. The trial judge should have the discretion to decide with finality whether a new trial is necessary in the interests of justice. It is in his power to observe the multiplicity of the situations as they arise during the course of the trial and he is in a better position to weigh the effect upon the jury and to decide whether or not substantial justice has been done. Roberts v. Hyland Builders Corp., 34 Ill. App. 2d 276, 280; Josate v. Mack, 302 Ill. App. 246, 248.

The trial court is allowed broad discretion in granting a new trial. Unless a clear abuse of this discretion is affirmatively shown, the granting of a new trial by the trial judge will not be reversed. The trial court is allowed greater latitude in granting a new trial than in denying one. Hollis v. Mateika, 66 Ill. App. 2d 267, 269; Thomas v. Chicago Transit Authority, 16 Ill. App. 2d 470, 476. This is particularly true where the plaintiff is a minor, as the court has a special duty to ensure that the rights of an infant are adequately protected. Muscarello v. Peterson, 20 Ill. 2d 548, 555-556.

In addition thereto the plaintiff contends that the Court erred in ruling on instructions. Criticism is directed to the Court's instruction IPI 70.03, modified by the Court, which reads as follows:

> "There was in force in the State of Illinois at the time of the occurrence in question a certain statute of the State of Illinois which provided that:
>
> > Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
> >
> > Every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child upon a roadway.
>
> If you decide that the defendant violated this statute on the occassion in question, then you may consider this fact with all the other facts and circumstances in evidence in determining whether or not a party was negligent before and at the time of the occurrence." (emphasis added)

There is a distinction between this instruction and the instruction in Deeke v. Steffke Freight Co., 50 Ill. App. 2d 1, 5-6, where the Court stated at page 6:

> "The two provisions of the statute were applicable and should not be separated in this type of case since the one counterbalances the other and thus makes it clear that the right-of-way given to a pedestrian at a crosswalk and not at other places, and the right-of-way given to vehicles at other points, are not absolute rights." (cites cases)

Attention is called to the difference in the last sentence of the instruction in the Deeke case, supra, which reads as follows:

> "There was in force in the State of Illinois at the time of the occurrence in question a certain statute which provided that:
>
> > 'Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
> >
> > 'Notwithstanding the provisions of this section every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.'
>
> "If you decide that the defendants violated the statute on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether or not the defendants were negligent before and at the time of the occurrence." (emphasis added)

and the instruction herein. The jury could have very well applied the pedestrian provision of the instruction to the plaintiff herein, a minor, since the plaintiff was the only pedestrian in the suit and the instruction was not limited to defendant.

Although the Court gave plaintiff's instruction IPI 11.03, that a minor was incapable of contributory negligence, we are of the opinion that instruction IPI 70.03 as given was confusing and erroneous in this case. Upon retrial the instruction should conform to that approved in Deeke v. Steffke Freight Co., supra.

The judgment of the trial court in granting a new trial is affirmed.

JUDGMENT AFFIRMED.

DAVIS, J. and SEIDENFELD, J. concur.

51803

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. GEORGE FORREST, Defendant-Appellant.	) APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, CRIMINAL DIVISION.) Honorable Joseph A. Power, Judge Presiding

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

Defendant, George Forrest, after a bench trial, was convicted of burglary and sentenced to the penitentiary for a minimum of two years and a maximum of five years. Defendant contends that he was not proven guilty beyond a reasonable doubt.

The evidence in the case adduced the following facts:

Albert King was the owner of a used furniture store at 6749 South Halsted Street in the City of Chicago. On May 23, 1966, he closed his place of business between 7:30 and 8:00 P. M. He locked all the doors and windows, and closed and locked the iron gates at the rear of the store. At about 9:00 P. M. of the same day he received a call from the Chicago Police Department and returned to his store where he found the glass broken out of the front and back doors, the night latch on the back door and the lock on the iron gate had been pried off with a crow bar which was lying beside the door. He also found a couch, chair and lamps which had been moved inside the store in the rear. He did not give anyone permission to enter his store after it was closed on May 23, 1966.

Patrolman Albert E. Cartwright testified that on May 23, 1966, at about 9:25 P. M. he responded to a call at 6749 South Halsted. He was with his partner, Louis Walker. As they approached the rear of the premises and flashed their

spotlight on the rear door they saw a figure close the door and run to the front of the store. Cartwright got out of the car, ran to the rear of the premises and saw the person break the glass in the front door and escape. Cartwright's partner, Louis Walker, ran around to the front of the building and chased and apprehended the defendant a block away. Cartwright also observed two table lamps and a green chair secreted in the alley about four doors away from the corner. A green couch was lashed to a metal dolly at the rear of the store. After his partner returned with the defendant he went to the rear and retrieved the furniture, replacing it in the store. Cartwright observed the broken glass out of the front door and blood stains around the glass and door area. When the defendant was returned by his partner he observed lacerations and blood on the defendant's hand. He testified that his partner had fired some warning shots when the defendant began to flee. They were about 25 feet away from the defendant when they flashed the spotlight on him as he was walking out of the building through the rear doorway. As soon as the light was flashed on the defendant he slammed the door and retreated back through the store. The warning shots were fired by Walker when he gave chase. The witness was asked whether he found a partially filled bottle of whiskey at the rear entrance, which question he answered in the negative.

Louis Walker, a police officer and partner of Albert E. Cartwright, testified to having received a call and having proceeded to 6749 South Halsted Street; that when he placed the spotlight on the back door the defendant, who was coming out of the store, slammed the door closed. Walker ran around to the front of the store and saw the defendant coming out through the plate glass window of the door. He ordered the

defendant to halt but he did not. When he brought the defendant back to the store he noticed cuts on both of his hands. The officer did not find a bottle of whiskey, but, in his opinion, the defendant had been drinking and was under the influence of liquor. Walker also stated that he announced his office to the defendant when he was at the rear of the premises.

The defendant testified that on the night in question he was in the alley drinking a bottle of whiskey. Prior to that he had been to a tavern to purchase alcohol. When the police car came in the alley he did not know that the men were police officers because it was a dark night. He further testified that he had just walked into the alley and opened the bottle of whiskey, saw the front of the car, and laid the bottle down. The defendant further testified that when the police arrived he was afraid because he did not know who they were, and since the doors to the store were open, he ran into the store to get away from them and find help. He explained that he broke the glass in the front door because he was running so fast through the store that he could not stop himself and he ran into the window. He further testified that he had been drinking earlier with a friend in various taverns, and that he just stopped in the alley to drink from the bottle which he had recently purchased. The defendant also testified that he did not hear the police say they were police officers. He just ran toward the door, which was wide open, and that all the lights in the store were on, and he ran through. When he heard the shot fired he was in fear of his life and ran where he thought some people would be.

Defendant was employed by Eklund United in Elk Grove Village and had been working for the last six months and was, according to his testimony, supporting his family.

Defendant further testified that he had been drinking with his brother and thereafter bought a half pint of whiskey on his way home and went into the alley to take a drink of it;

that he had no intention to burglarize the premises. He had called his wife before going into the alley and told her that he would be right home. She told him to hurry up because a hurricane warning was out. Forrest denied that he piled up the furniture at the rear of the premises.

Defendant further testified that after the police captured him they poured whiskey over him and took him to a court where they put on his arrest slip that he had been drinking in the alley; that he was not charged with burglary until later.

A friend of the defendant testified that he and the defendant had been drinking earlier that evening but that he left the defendant sometime around 9:00 or 9:30 that evening.

Evidence of a prior conviction of the defendant of armed robbery in 1958 was introduced by the State.

The evidence further showed that the defendant did not own an automobile, had no driver's license and did not know how to drive a car.

The only apparent conflicts which appear from the evidence are whether the police officers saw the defendant in the burglarized premises when they first arrived on the scene; whether the first shot was fired at the defendant after he crossed Halsted Street, and whether when Officer Walker was at the rear of the premises he announced his office to the defendant.

The trial court's decision in this case primarily rested upon the question of the credibility of the witnesses. The trier of fact in this case observed the demeanor of the witnesses while on the witness stand, their candor or lack of candor while testifying, and considered the plausibility of the stories given by the witnesses. It has been held in numerous cases that the court will not reverse a judgment of

conviction where the evidence is merely conflicting. It must be palpably contrary to the verdict, or so unreasonable, improbable or unsatisfactory as to justify entertaining a reasonable doubt of the guilt of the defendant. A reviewing court will not substitute its judgment for that of the jury or the trial court where the evidence is conflicting. People v. Lobb, 17 Ill. 2d 287; People v. Meyers, 412 Ill. 136; People v. Malmenato, 14 Ill. 2d 52. The two police officers who drove into the alley saw the defendant leaving a store that had been locked by its owner. The rear door and metal gate had been forced open. The trial judge apparently had no reason to disbelieve the testimony of the police officers when they stated that one of them had announced they were police officers. The defendant, instead of stopping, attempted to escape. The fact of flight is a circumstance which may be considered by the trier of the facts, in connection with other evidence in the case, as tending to prove guilt. People v. Lobb, supra. The trial judge had reasonable grounds to believe from the evidence that the defendant was arranging the stolen property outside the store, which he had broken into, in order that he could cart it away. The courts have repeatedly held in dealing with burglary cases that if a defendant elects to justify or explain his presence at or near the scene of a crime, yet denies participation, he must tell a reasonable story or he will be judged by its improbabilities. People v. Spagnolia, 21 Ill. 2d 455; People v. Davis, 27 Ill. 2d 33; People v. Songer, 28 Ill. 2d 433. Defendant here contends he went into the alley to drink a bottle of whiskey. It was after dark and raining. No explanation was given by the defendant as to why, under those conditions, he would go into an alley to drink from a bottle. He also testified that his wife had told him to come right home because there had been hurricane warnings.

By going into an alley, he would be exposing himself to a possible hurricane.

While the defendant denied that the police officers announced they were policemen, the police state they flashed their spotlight on him and announced that they were policemen. This was a question of credibility to be determined by the trial judge.

Defendant further contended that the lights were on in the store and the door was wide open when he arrived. However, the owner had previously testified that he had locked all the doors and windows.

From the record before us we find nothing to indicate that the police officers were activated by any improper motive. Defendant contends that the police changed their report from one stating that the defendant was sitting in the alley drinking to one stating that he committed the crime of burglary. The record is barren of any earlier report by the police except the statement of the defendant. No such report was produced, nor was one sought at the trial. The police were not questioned on cross-examination as to this charge. This was a matter of credibility to be determined solely by the trier of the facts.

The defendant cites People v. Sheppard, 402 Ill. 347, in support of the proposition that all facts and circumstances in evidence will be resolved on the theory of innocence rather than guilt if that may reasonably be done. With that statement of the law we have no quarrel. However, the entire record in the instant case does not leave us with grave or substantial doubt of the guilt of the defendant. Other cases cited by the defendant are not persuasive.

We conclude that the evidence proved the defendant guilty of the crime of burglary beyond a reasonable doubt, and the judgment is therefor affirmed.

AFFIRMED

DEMPSEY, P.J. and SCHWARTZ, J. concur.

No. 52221

99 I.A.

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
v.	)	COOK COUNTY.
FRANK AURELI, Defendant-Appellee.	)	HON. JACQUES F. HEILINGOETTER

MR. JUSTICE SCHWARTZ DELIVERED THE OPINION OF THE COURT.

This is an interlocutory appeal, pursuant to Supreme Court Rule 604, from an order of the trial court, quashing a search warrant and suppressing certain evidence seized pursuant to the warrant. The State contends that the affidavit on which the warrant was issued presented reasonable cause for its issuance and that the motions to quash the warrant and to suppress the evidence should have been denied. The facts follow.

Duncan J. Everette, a special agent for the Federal Bureau of Investigation and referred to herein as the affiant, filed a complaint supported by affidavit seeking a search warrant for the premises described as 6949 West Grand Avenue in Chicago, Illinois. The complaint alleged that records of race horse bets, scratch sheets, miscellaneous gambling paraphernalia and other evidence of the offense of gambling could be found and seized at that address. Everette's affidavit averred that he received information from two informers, each of whom had supplied reliable information concerning other gambling matters, and that they told of calling the Chicago telephone number 889-7272 on five different days and placing bets with the man who answered. The affidavit further alleged that the informers furnished the information separately and without knowledge of each other's identity as an informer. He

(Everette) then determined from telephone company records that the telephone number in question was that of Sam Golden of the Grand Avenue address; that he proceeded to place the building at that address under surveillance and that he personally observed the defendant entering the premises on July 15th and July 19th and again observed him in the vicinity of the building on July 25, 1966. The affidavit further recited that police records showed that the defendant had been charged with gambling and bookmaking on six different occasions. On the foregoing facts the warrant issued and the search was carried out.

The issue presented on this appeal is whether the hearsay statements contained in the affidavit are supported by sufficient underlying circumstances to merit recognition by the court as reasonable and reliable information. The court is not confined to rules of evidence such as would apply in the trial of a case nor does the law require that the affidavit allege facts sufficient to sustain a conviction. Moreover, courts are disposed to greater leniency with respect to the admission of evidence seized pursuant to a warrant than with respect to evidence seized pursuant to an arrest. United States v. Ventresca, 380 U.S. 102 (1964).

An affidavit supporting a complaint for a search warrant is not deemed insufficient because it contains hearsay statements "so long as a substantial basis for crediting the hearsay is presented." Aguilar v. Texas, 378 U.S. 108 (1964); United States v. Ventresca, 380 U.S. 102 (1964); Jones v. United States, 362 U.S. 257 (1960). Thus probable cause for search may be based on information supplied by an informant if the reliability of the informant has been previously estab-

lished, People v. Durr, 28 Ill. 2d 308, 192 N.E. 2d 379, or independently corroborated, People v. McFadden, 32 Ill. 2d 101, 203 N.E.2d 888.

In the instant case the affiant stated that two informers, each unknown to the other and each of whom had in the past supplied reliable information regarding gambling matters, disclosed that they had placed bets through the telephone number identified with the premises and set forth in the complaint. The affiant also stated that he had observed the defendant in or around the premises in question on July 15, July 19 and July 25, 1966, and that he had discovered from police records that the defendant had been charged with gambling and bookmaking on six occasions.

The warrant must stand or fall on the facts set forth above. The other allegations in the affidavit which relate to the defendant's itinerary to and from the Grand Avenue address are of no value since the source of the information is not specified and the allegations are prefaced only with the statement that the defendant "was observed."

Excluding the allegations referred to in the preceding paragraph, however, the facts presented by the affidavit are still sufficient to support the issuance of a search warrant. People v. Williams (alias Kid Rivera), 36 Ill. 2d 505, 224 N.E.2d 225; People v. William J. Williams, 27 Ill. 2d 542, 190 N.E.2d 303. In both Williams cases,search warrants were issued on the basis of the hearsay statements of reliable informers. The informers told of witnessing and participating in dice games and horse race betting and in each case the affiant stated that the informers had supplied reliable information in the past. Although not essential to the outcome of

the cases, the court observed in one case that known gamblers were seen frequenting the suspect premises and in the other case the informer forwarded betting slips to the affiant. In each case the court upheld the validity of the search warrant.

The defendant contends that the two Williams cases are not controlling and he relies on United States v. Roth, 391 F. 2d 507 (7th Cir.). In that case the informer did not advise the law enforcement authorities of his personal observations, but merely relayed information from another undisclosed source. The informer was therefore only a conduit for the information and the reliability of the primary source could not be ascertained. It also appeared that the personal observations of the affiant and the other agent were insufficient to corroborate the information. One agent had observed in a warehouse sought to be searched boxes bearing a well known trade name similar to that of the company whose goods were charged to have been stolen. The court held that the boxes could have contained any of a wide variety of products manufactured by that company and that they did not necessarily contain the stolen merchandise which was sought. That is quite different from the case before us.

Defendant also contends that the court could not consider his previous arrest record as tending to corroborate the informers' statements and he cites United States v. Mirallegro, 387 F.2d 895 (7th Cir.). In that case there was no allegation that any person had observed the actual gambling transactions or had participated in them. The affidavit merely stated that the suspect customarily purchased a racing

form and then proceeded to an apartment in an adjoining city and that he had been arrested for gambling in 1933 and in 1965. The court held (with one dissent) that the affidavit failed to establish probable cause for the issuance of the warrant.

The principal difference between the instant case and Mirallegro, supra, is that in Mirallegro neither the affiant nor any informer observed the commission of a crime or participated therein. In that case facts which were observed and set forth in the affidavit were not in the opinion of the court sufficient to support an inference that a crime was being committed.

In the instant case the affidavit identified the premises as the location at which telephone bets had been placed, and the conduct described, far from being innocent, was in itself criminal. It was then material, under People v. Williams, 36 Ill. 2d 505, 224 N.E.2d 225, to show that the suspect premises were frequented by known gamblers. Defendant was observed entering the building and was shown to have a substantial record of gambling charges.

The defendant also contends that the affiant Everette had no authority to investigate gambling offenses and that he appears in this case as a private citizen and a volunteer. That does not affect the credibility or accuracy of the affidavit he made. The affidavit was sufficient to establish probable cause for the issuance of the warrant, and the search was reasonable.

The order is reversed and the cause is remanded with directions to admit the evidence obtained by the search upon

the trial of the defendant, and for such other and further proceedings as are not inconsistent with the views herein expressed.

ORDER REVERSED AND CAUSE REMANDED WITH DIRECTIONS.

DEMPSEY, P.J. and SULLIVAN, J. concur.

51842

99 I.A.2 377

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, vs. LESTER WRIGHT (Impleaded), Defendant-Appellant.	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY, CRIMINAL DIVISION. Hon. John C. Fitzgerald, Judge Presiding.

MR. JUSTICE LYONS DELIVERED THE OPINION OF THE COURT.

The defendant, Lester Wright, was indicted jointly with another man for the offense of theft from the person. Wright's pre-trial motion for a severance was granted. In a subsequent bench trial, he was found guilty of the offense as charged in the indictment and judgment was entered. After his motions for a new trial and in arrest of judgment had been denied, Wright was sentenced to not less than one year nor more than four years in the Illinois State Penitentiary. The defendant's sole contention on appeal is that the State failed to prove beyond a reasonable doubt that he aided and abetted the co-indictee in the commission of the offense.

The State produced two witnesses. Mrs. Eunice G. Atchison, the complaining witness, testified that she was waiting for a bus in downtown Chicago in the early evening hours of April 21, 1965. There were a few other people waiting with her when the defendant and his companion, the co-indictee, appeared. They crowded her from her left side as the bus approached. She was holding her handbag in her left hand. The bus stopped, three people alighted and the complaining witness boarded, with the two men still crowding her. They were immediately behind her now. Continuing, the complaining witness testified that upon reaching the top step, she noticed a difference in weight in her handbag and looking down, she saw that it was open and her billfold was gone. She immediately asked both the defendant and the co-indictee for its

return, but the latter denied having it. The defendant said nothing in response to this accusation as he had gone behind and around the complaining witness during this commotion and was talking with the bus driver. The witness did not hear this conversation, but she did hear the defendant say, "We're getting off of here" as he left the bus driver and was leaving the bus. At that time the defendant and the co-indictee, his companion, were arrested by a plainclothes Chicago Transit Authority police officer.

The complaining witness then identified a small blue purse, introduced into evidence as People's Exhibit 1, as the purse that she had in her handbag and which purse was taken on the evening in question. She stated that she had $15.82 in the purse when it was removed from her handbag. Mrs. Atchison did state that the defendant did not touch or brush against her as she was waiting for the bus to arrive. His companion, the co-indictee, was standing next to her and the defendant was standing next to him as the bus approached. It was her testimony, however, that the defendant and his companion crowded her as the bus was approaching and as she boarded it.

On cross-examination, she testified that she was the first person to board the bus, with the defendant and his companion immediately following her. The defendant and his friend were going up the stairs of the bus together, side by side. Upon seeing that her purse was missing, she thrice accused both the defendant and his companion of taking it. They were arrested immediately after the defendant said to his companion, the co-indictee, "Come on, we're getting off here," and began descending the front steps of the bus. Everyone remained on the bus until the Chicago Transit Authority police officer returned the purse to this complaining witness. He had found it, discarded,

beneath the bus driver's seat. On redirect-examination, Mrs. Atchison testified that her handbag only had a little catch which could easily be lifted upward, thereby opening the handbag. The purse was within the handbag.

Officer Zito, the Chicago Transit Authority police officer who arrested the defendant and his companion, testified for the State that he observed Wright shoving and pushing Mrs. Atchison as Wright boarded the bus with her. The defendant also made a commotion by telling the people to hurry up and get on the bus. Furthermore, Zito stated that he did not see the co-indictee open the handbag, but he did see the co-indictee's hand go into the handbag and remove the purse. The defendant then attempted to leave the bus. Zito further testified, "Then Lester Wright was coming back down the stairs and I grabbed him and he seen me and yelled out, police officer. And at that time Leon Clark, he was still up on the top level, and he threw the wallet underneath the bus driver's seat." When he removed the defendant and the co-indictee from the bus, the latter stated that he wanted to straighten the matter out, but the defendant told him to be quiet. Nothing more was said. Zito stated that before the arrest he heard the defendant say to the co-indictee, "Come on, man, let's go; this is the wrong bus."

The only witness for the defense was the defendant who denied any participation in the theft. He admitted being at the scene when the offense occurred, but denied being on the bus at any time. Furthermore, he allegedly did not see the victim of the theft until after he had been arrested. His testimony was that he met the co-indictee, an old friend, that evening on another bus where they engaged in friendly conversation. Both men left this bus at the same stop with the defendant exiting one way and the co-indictee another way. Hence, in boarding the second bus

they were separated. The co-indictee allegedly was in the front of the crowd and the defendant was in the rear. According to the defendant's testimony, he did not know that the co-indictee was going to board the same bus as he. He never spoke with the bus driver as he had never been on the bus, always allegedly remaining on the bus loading platform.

In an attempt to impeach the defendant's credibility as a witness, the State introduced into evidence a certified document from the Clerk of the Circuit Court of Cook County showing that the defendant, Lester Wright, had a prior conviction for an infamous crime, in that in 1959 he had been found guilty by the court upon a plea of guilty of the offense of theft from the person and was sentenced to not less than one nor more than two years in the penitentiary.

This case involves the use of circumstantial evidence to prove beyond a reasonable doubt that the defendant, at the scene of the offense, aided and abetted the co-indictee, his companion, in the theft of the purse from the person of the complaining witness, Mrs. Atchison. On appeal, the defendant argues that the State by its evidence only proved that he was present at the scene and did not prove that he aided or abetted the co-indictee in any way. This court cannot agree with such a contention. Circumstantial evidence is legal evidence and where it is strong and convincing in character, it is sufficient to warrant a conviction for larceny. See People v. Finch, 394 Ill. 183, 68 N.E.2d 283 (1946). Theft from the person is an aggravated form of larceny in that theft from the person is punishable as a felony regardless of the value of the property taken. See Ill. Rev. Stat. (1967) ch. 38, sec. 16-1 (Penalty). Therefore, circumstantial evidence is competent evidence to prove the offense of theft from the person.

What weight to give this circumstantial evidence presented

by the State as opposed to the denial of criminal guilt presented by the defendant and what credibility to give to the opposing witnesses was for the trial court as the trier of fact without a jury. By its finding and subsequent judgment, the trial court indicated that it believed the prosecution's witnesses, and that no reasonable doubt of defendant's guilt was present.

To accept the defendant's contention that the State failed to prove by its circumstantial evidence that he aided and abetted the co-indictee at the scene of the offense, this court would have to accept as mere coincidence the fact that the defendant approached and crowded the complaining witness both as the bus approached and in boarding the bus; that this crowding occurred on the complaining witness' left side, the same side on which she was holding her handbag; that the defendant caused a commotion in boarding the bus by telling everyone to board quickly and by pushing and shoving the complaining witness; that the defendant sought to leave the bus and said to his companion, the co-indictee, "Come on, we're getting off here," soon after the complaining witness had thrice accused them both of the offense; that the defendant quickly yelled "police officer" when arrested, thereby causing the co-indictee to hurriedly discard the fruits of the crime; that the defendant told the co-indictee to remain silent when the latter indicated to the Chicago Transit Authority arresting officer that he wanted to straighten things out.

These are affirmative acts committed by the defendant showing circumstantially and beyond a reasonable doubt that he shared with the co-indictee a common design to commit the offense of theft from the person and that he aided and abetted the co-indictee in its commission. The links in this chain of

circumstantial evidence, when viewed in their totality, exclude every reasonable hypothesis of innocence and inexorably establish the criminal guilt of the defendant beyond a reasonable doubt. There is thus ample competent and credible evidence in the record to support the trial court's finding that the defendant was not an innocent spectator at the scene of the offense but was an active participant in its perpetration. Hence, the defendant is properly charged with criminal accountability as a principal for the criminal act of the co-indictee, his companion, in removing the purse from the handbag of the complaining witness. See Ill. Rev. Stat. (1967) ch. 38, sec. 5-2(c).

The judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

BURKE, P.J., and MC NAMARA, J., concur.